IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1199 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGIRATH KANTILAL BHATT

Versus

MUNICIPAL CORP.OF VADODARA

Appearance:

1. Special Civil Application No. 1199 of 2003

MR RD RAVAL for Petitioner No. 1-3

MR HARESH J TRIVEDI for Respondent No. 1

..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/09/2003

ORAL JUDGEMENT

RULE. With consent of the parties, the matter is taken up for final hearing today.

2) By filing this petition, it is prayed by the petitioners that the action of the Corporation in not giving the benefit to the petitioners on completion of 18 years of service, as per the scheme known as 9-18-27 is arbitrary, illegal and discriminatory and it should be quashed and set aside.

3) The petitioners were initially appointed on temporary basis in clerical cadre. It is argued by Mr.Raval, the learned advocate for the petitioners that during the period between 1983 to 1991, the petitioners were in clerical cadre but thereafter, their services were terminated, which resulted into an industrial dispute being Reference (L.C.V.) No.183/1991. The petitioners and the respondent-Corporation settled the said dispute and as per the consent terms, which are placed on record on page 13, the petitioners were to be reinstated in service on their original posts as junior clerks on permanent basis but on probation. At the time of settlement, the petitioners gave up their claim of back wages etc. but so far as past service is concerned, benefit of gratuity was made available to the petitioners. Subsequently, the scheme regarding higher pay scale known as 9-18-27 has came into force. It is submitted by Mr.Raval that at the time when the matter was settled before the Labour Court, the aforesaid scheme of 9-18-27 was not in existence and, therefore, naturally petitioners had not taken care of getting such right. It is submitted that some other employees, whose cases are identical were also given benefits of 9-18-27.

4) Mr.Trivedi has submitted that the Corporation has given such benefits to three employees, who have settled the dispute in similar manner, in which the petitioners have settled the dispute before the Labour Court.

5) It is submitted on behalf of the petitioners that when the Corporation gave benefit to such three employees, there is no reason to discriminate the petitioners from giving such benefit of higher pay scale on completion of 18 years of service. It is submitted that the Corporation is not giving benefit of 9-18-27 to the petitioners, only in view of the settlement arrived at in the Labour Court, by which the petitioners had agreed to give up their earlier service for all practical purposes, except for gratuity.

6) Mr.Trivedi, who is appearing for the Corporation has conceded the fact that the Corporation has already given such benefit to three other employees, for which he has also relied on pages 33, 34 and 35 of the

compilation, annexed with the affidavit-in-rejoinder filed by Mr.Raval.

7) When it is not in dispute that some other employees have been given such benefit, even though they have also entered into similar type of settlement with the Corporation, there is no reason to discriminate the petitioners from the aforesaid benefit. It seems that in view of some audit objection, clarification was also given by the Corporation. It is also required to be noted that at the relevant time, the scheme regarding higher pay scale, i.e. 9-18-27, was not applicable.

8) Considering the aforesaid aspect of the matter and considering the fact that the Corporation has given such benefit to other similarly situated employees, this petition is required to be allowed. The petitioners be given said benefit on the same lines on which other similarly situated employees have been given such benefit by the Corporation. Learned advocate Mr.Raval for the petitioners submitted that the petitioners are not claiming any monetary benefits for the intervening period. Considering the facts and circumstances of the case, the Corporation is directed to give benefit of revision of pay scale to the petitioners on the basis of the applicability of the scheme, i.e. 9-18-27 years. It is clarified that the past services of the petitioners to be taken into account only for giving this benefit and not for any other purpose. Mr.Raval has submitted that the petitioners will file necessary undertaking with the Corporation in the same terms, on which other three employees have given such undertaking with the Corporation stating that the petitioners will not claim any benefits of arrears for the intervening period prior to 1991 and will not claim any monetary benefit for the intervening period and that the petitioners shall be satisfied with notional benefit, without there being any monetary benefit for the intervening period. The salary of the petitioners may accordingly be revised giving them the benefit of aforesaid scheme.

9) This petition is accordingly allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J.)
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